

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| _____                           | ) |                                    |
| ROBERT O'SHEA, CHAIRMAN OF THE  | ) |                                    |
| WARD 6 DEMOCRATIC COMMITTEE, ET | ) |                                    |
| AL.,                            | ) |                                    |
|                                 | ) |                                    |
| Plaintiffs,                     | ) | Civil Action No. 1:22-cv-12048-PBS |
| v.                              | ) |                                    |
| BOSTON CITY COUNCIL,            | ) |                                    |
|                                 | ) |                                    |
| Defendant.                      | ) |                                    |
| _____                           | ) |                                    |

**MOTION FOR CLARIFICATION OF SCHEDULING ORDER DEADLINES**

The Defendant, the Boston City Council (the "Council"), moves to clarify that the February 27, 2023 deadline in the parties' Joint Statement (Dkt. No. 30; Jan. 20, 2023), as adopted and modified by the Court's Electronic Order (Dkt. No. 37, Jan. 23, 2023), requires the Plaintiffs to file a motion seeking the Court's leave to amend their Complaint by that date. In support of this motion, the Council states as follows:

1. On November 2, 2022, Plaintiffs filed their original civil complaint in the Superior Court, Suffolk County, Commonwealth of Massachusetts. *O'Shea, et al. v. Boston City Council*, No. 2284CV2490 (Super. Ct. Mass. filed Nov. 2, 2022) (Dkt. No. 1, Ex. A).
2. On November 21, 2022, prior to the Council's answer, Plaintiffs filed their First Amended Complaint as of right, pursuant to Mass. R. Civ. P. 15(a) (Dkt. No. 1, Ex. A).
3. On December 12, 2022, the case was removed to the United States District Court for the District of Massachusetts (Dkt. No. 1).
4. The parties filed their Joint Statement on January 20, 2023. At the parties' Rule 16 conference on January 23, Plaintiffs asked to include a date by which they could seek to amend their pleadings. The Court agreed, set that date as February 27, 2023, and in response to

an inquiry from Defendants' counsel, clarified that Plaintiffs would need to move to amend their complaint and could not just file as a matter of right.

5. This procedure is consistent with case law on this issue: when a plaintiff amends their complaint as a matter of course in state court, after which the case is removed to federal court, the plaintiff may not further amend the complaint without the consent of the defendant or leave of court. *Mullane v. Portfolio Media, Inc.*, No. 19-11496-PBS, 2019 WL 12316202, at \*7 (D. Mass. Nov. 19, 2019) (Dein, U.S.M.J.), *adopted by Mullane v. Portfolio Media, Inc.*, No 19-11496-PBS, 2020 WL 1932717, at \*1 n.1 (D. Mass. Feb. 28, 2020).

6. Here, where Plaintiffs amended their Complaint in state court, and the Council does not consent to further amendments, Plaintiffs must seek leave of court to file a second amended complaint. Fed. R. Civ. P. 15(a)(2).

7. The Electronic Clerk's Notes docketed on January 23, 2023, adopts the Joint Statement and modifies it to require that "[a]ny Amendments" be filed by February 27, 2023.

8. After that order was docketed, Defendant's counsel reached out to Plaintiffs' counsel to confirm the parties' understanding that this deadline was for a motion to amend, not an amended complaint. Plaintiffs' counsel responded that they "will be filing an Amended Complaint on or before February 27th." Affidavit of Christina Marshall, ¶ 2.

9. Given this unanticipated and apparent disagreement between the parties regarding the February 27 deadline, the Council seeks clarification from this Court in advance of the deadline.

WHEREFORE, the Council respectfully requests that the Court amend its Electronic Order to clarify that Plaintiffs are required to file a motion seeking the Court's leave to file a Second Amended Complaint by February 27, 2023.

By its attorneys,

/s/ Lon F. Povich

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Dated: February 17, 2023

Rule 7.1(a)(2) Certification

I certify that counsel have conferred and have attempted in good faith to resolve or narrow the issues raised in this motion.

/s/ Christina S. Marshall

Christina S. Marshall

Certificate of Service

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 17th day of February 2023.

/s/ Christina S. Marshall

Christina S. Marshall